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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC**

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**PETITION OF CITIZENS COMMUNICATIONS  
FOR WAIVER OF SECTION 52.33(a) OF THE  
COMMISSION'S RULES**

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**CC Docket 95-116**

**PETITION FOR WAIVER**

The local exchange affiliates of Citizens Communications Company ("Citizens"), by counsel and pursuant to 47 C.F.R. § 1.3,<sup>1</sup> respectfully request a waiver of Section 52.33(a) of the Commission's rules, 47 C.F.R. § 52.33(a).<sup>2</sup> Waiver of Section 52.33(a), which relates to

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<sup>1</sup>      Waivers may be granted upon good cause being shown.

<sup>2</sup>      That section states:

Incumbent local exchange carriers may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Federal Communications Commission a monthly number portability charge, as specified in subparagraph (a)(1), and a number portability query-service charge, as specified in paragraph (a)(2).

(1)      The monthly number-portability charge may take effect no earlier than February 1, 1999, on a date the incumbent local exchange carrier selects, and may end no later than five years after that date.

(i)      An incumbent local exchange carrier may assess each end user it serves in the 100 largest metropolitan statistical areas, and each end user it serves from a number-portability-capable switch outside the 100 largest metropolitan statistical areas, one monthly number-portability charge per line except that:

(A)      One PBX trunk shall receive nine monthly number-portability charges.

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recovery of local exchange carriers' (LECs) local number portability (LNP) costs, is required in order to permit Citizens, which is an incumbent LEC (ILEC) that is not obligated to provide LNP in its service areas, to recover from end users its costs of originating calls to LNP-capable exchanges.

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- (B) One PRI ISDN line shall receive five monthly number-portability charges.
  - (C) Lifeline Assistance Program customers shall not receive the monthly number-portability charge.
- (ii) An incumbent local exchange carrier may assess on carriers that purchase the incumbent local exchange carrier's switching ports as unbundled network elements under section 251 of the Communications Act, and resellers of the incumbent local exchange carrier's local service, the same charges as described in paragraph (a)(1)(A) of this section, as if the incumbent local exchange carrier were serving those carrier's end users.
  - (iii) An incumbent local exchange carrier may not assess a monthly number-portability charge for local loops carriers purchase as unbundled network elements under section 251.
  - (iv) The incumbent local exchange carrier shall levelize the monthly number-portability charge over five years by setting a rate for the charge at which the present value of the revenue recovered by the charge does not exceed the present value of the cost being recovered, using a discount rate equal to the rate of return on investment which the Commission has prescribed for interstate access services pursuant to Part 65 of the Commission's Rules.
- (2) The number portability query-service charge may recover only carrier-specific costs directly related to providing long-term number portability query service to carriers on a prearranged and default basis.

## **I. BACKGROUND**

Under Commission rules implementing Section 251(e) of the Telecommunications Act of 1934, as amended, 47 U.S.C. § 251(e), all LECs incur costs for the implementation of LNP regardless of whether they are currently providing LNP.

These costs include mandatory contributions toward the costs of the regional Number Portability Administration Centers (NPACs).<sup>3</sup> More significantly, these costs also include payment by ILECs serving non-LNP-capable exchanges of query-service charges whenever they are the N-1 carrier, which is in all cases except when the originating ILEC hands the call to an intermediary carrier such as an interexchange carrier. These query service charges are paid either to the ILEC serving the LNP-capable terminating exchange or to a third-party vendor under a contract with the originating N-1 ILEC. These query-service charges are usage-sensitive and will become increasingly substantial as the number of LNP-capable exchanges increases. No mechanism exists for non-LNP-capable N-1 ILECs to recover these costs.

Section 52.33(a) of the Commission's rules, 47 C.F.R. § 52.33(a), permits ILECs that provide LNP to recover their carrier-specific LNP costs through a federally-tariffed monthly end-user charge. These end user charges may be applied, however, only in areas in which the ILEC has implemented LNP. ILECs that are not yet required to implement LNP and that have not yet done so, however, have no means to recover their LNP costs described above.

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<sup>3</sup> See 47 C.F.R. § 52.32. See also Telephone Number Portability, CC Docket No. 95-116, *Third Report and Order*, 13 FCC Rcd 11701 (1998) at ¶¶ 87-93 (*LNP Cost Recovery Order*).

## **II. WAIVER REQUEST**

Citizens therefore respectfully requests that the Commission waive Section 52.33(a) of its rules to permit Citizens to recover its LNP costs through a bifurcated end-user charge. Prior to implementing LNP in those exchanges that do not already have permanent LNP, Citizens proposes to recover its mandatory NPAC contributions and query-service charges through an LNP Query Surcharge assessed on end users.<sup>4</sup> After implementing permanent LNP in those exchanges that do not already have it, Citizens proposes to recover the remainder of its carrier-specific LNP costs through an LNP Service Surcharge that will likewise be assessed on end users as contemplated by Section 52.33(a).

This waiver would afford Citizens a reasonable opportunity to recover the LNP costs it incurs prior to the time that it implements permanent LNP as a result of payment of mandatory contributions to NPACs and of query-service charges.

This approach is consistent with the Commission's statement that "recovery from end users should be designed so that end users generally receive the charges only when and where they are reasonably able to begin receiving the direct benefits of long-term number portability."<sup>5</sup> End user customers in non-LNP-capable exchanges receive the direct benefit of continuing to be able to place calls to end users located in exchanges in which LNP has been implemented.

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<sup>4</sup> This is not the same as the query service charge that an LNP-capable ILEC assesses on N-1 carriers pursuant to 47 C.F.R. § 52.33(a)(2). Instead, this is a charge that an N-1 carrier would assess on its end users to recover the charges that it pays to LNP-capable ILECs.

<sup>5</sup> *LNP Cost Recovery Order* at ¶ 142.

On the other hand, forcing a rural ILEC to implement permanent LNP in exchanges in which permanent LNP is unnecessary in order to recover the costs at issue here does not achieve the Commission's goal noted above or its goal of ensuring that customers quickly obtain the benefits of LNP.<sup>6</sup> The primary benefit of permanent LNP is to enable end users to retain their existing telephone number when they change local carriers. Because CLECs often choose to focus first on urban and densely populated exchanges, some rural exchanges are less likely to be the subject of requests for permanent LNP within the near future. Forcing rural carriers to implement permanent LNP in such exchanges just to recover the costs at issue here means that end users will bear the total costs of permanent LNP implementation before they are able to take full advantage of its benefits. Citizens' proposal, on the other hand, provides a means to ensure that end users pay only the minimum amount necessary to allow Citizens a reasonable opportunity to recover its costs while delaying the costs of permanent LNP implementation until such time as customers can take full advantage of its benefits.

In addition, Citizens' proposal further benefits customers and furthers the public interest by enabling ILECs to focus scarce capital resources on activities such as improving service quality and deploying advanced services rather than on implementing permanent LNP before customers can take advantage of its benefits. The public interest is not well served by strictly enforcing regulations that in certain limited cases, such as those here, skews investment decisions and steers

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<sup>6</sup> See *id.* at ¶ 143.

capital away from investments that more directly benefit customers now and toward investments of which customers are not yet able to take full advantage.

Allowing non-LNP capable N-1 ILECs to recover their costs in this manner is also consistent with the requirement that LNP costs be recovered in a competitively neutral manner. The means of cost recovery suggested by Citizens will not unfairly burden competitors. Indeed, the Commission has chosen this cost recovery method for use when competitors first enter a market.

Citizens' suggested means of cost recovery is, however, somewhat different than that suggested by NECA and other associations over two years ago in a similar waiver request.<sup>7</sup> NECA and the other associations sought a waiver to permit recovery of the same costs at issue here. They suggested, however, that these costs be recovered in interstate access charges. The adoption of CALLS during the pendency of that petition has severely limited the ability of price cap LECs to so recover these costs.<sup>8</sup> Because Citizens is a price cap LEC, recovering these charges through interstate access charges is not a viable option.

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<sup>7</sup> Joint Petition of the National Exchange Carrier Association, Inc. (NECA), National Rural Telecom Association (NRTA), National Telephone Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and United States Telephone Association (USTA) for Expedited Interim Waiver of Section 52.33(a) of the Commission's Rules, filed March 19, 1999.

<sup>8</sup> The MAG plan may have a similar effect on non-price cap LECs.

### III. CONCLUSION

Good cause being shown, Citizens respectfully requests grant of a waiver of Section 52.33(a) of the Commission's rules, 47 C.F.R. § 52.33(a) to permit Citizens to recover mandatory NPAC contributions and query-service charges it incurs prior to implementing LNP. The Commission should permit initiation of a bifurcated end user LNP charge so that the costs at issue here may be recovered via an LNP Query Surcharge and other LNP costs may be recovered via an LNP Service Surcharge. The LNP Query Surcharge will be initiated upon grant of this waiver request, and the LNP Service Surcharge will be initiated upon implementation of permanent LNP

Respectfully submitted,

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